

APPEAL NO. 042101
FILED OCTOBER 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 2, 2004. The hearing officer determined that the respondent/cross-appellant's (claimant) compensable injury of _____, extends to include osteoarthritis and chondromalacia in the left knee, and that the claimant had disability beginning on April 17 and continuing through August 11, 2003, and again beginning on June 21, 2004, and continuing through the date of the hearing. The appellant/cross-respondent (carrier) appealed the determinations, arguing that the hearing officer's determination on extent of injury is against the great weight and preponderance of the evidence so as to be clearly erroneous and manifestly unjust and constitute an abuse of discretion. The carrier also argues that there should have been no disability since, it asserts, the compensable injury did not extend to include osteoarthritis and chondromalacia in the left knee. The claimant appealed the disability determination arguing that the hearing officer intended to find that the second period of disability began on January 21, 2004, rather than June 21, 2004. The claimant urges affirmance of the extent-of-injury determination and the carrier urges affirmance of the disability determination, if there is to be a finding of disability at all.

DECISION

Affirmed in part and reversed and rendered in part.

EXTENT OF INJURY

The claimant testified that she fainted and fell on _____, while working at a convenience store. The claimant did not seek medical attention until April 17, 2003, when she presented at a hospital emergency room. She reported having injured her left knee, left elbow, and right jaw in the fall at work. X-rays of her left knee found no fracture or dislocation. Some mild arthritic changes were found, primarily osteophytes off of the posterior patella. She was referred to an orthopedic surgeon. An MRI performed on April 30, 2003, found moderate osteoarthritis and chondromalacia of the patellofemoral joint as well as a medial meniscus tear. An arthroscopic partial meniscectomy was performed on June 4, 2003. The claimant continued to report pain. On December 1, 2003, her treating doctor raised the possibility of a knee replacement. A peer examination on December 15, 2003, found that the claimant's complaints at that time were related to a disease of life. He did state that the patient's fall probably exacerbated and/or aggravated the previously existing pathology present in her knee. On December 29, 2003, the carrier filed a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) disputing that the claimant's compensable injury to her left knee extended to include osteoarthritis and concomitant degenerative changes. On January 21, 2004, the claimant was examined by Dr. R who discussed a possible knee replacement. He took her off work through June 21, 2004, pending surgery. On

June 21, 2004, Dr. R extended the no-work period through August 21, 2004. A Texas Workers' Compensation Commission (Commission)-appointed required medical examination (RME) performed by Dr. G on April 12, 2004, found a causal relationship between the compensable injury and the claimant's current condition although she had arthritic changes in the joint before her fall. Another orthopedic surgeon testified for the carrier that there was no causal connection between the compensable injury and the osteoarthritis and chondromalacia.

The issue of extent of injury presented a question of fact for the fact finder. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer noted in his Background Information section of the decision and order that three orthopedic surgeons have opined that the claimant's degenerative left knee conditions are causally related to the compensable injury of _____. Nothing in our review of the record reveals that the hearing officer's extent-of-injury determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse the determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

DISABILITY

The hearing officer found that the claimant had disability beginning April 17 and continuing through August 11, 2003, and again beginning on June 21, 2004, and continuing through the date of the hearing. The claimant appeals on the grounds that the evidence shows that she was taken off work by Dr. R on January 21, 2004. The claimant testified that Dr. R had taken her off work on January 21, 2004. In evidence is an undated Work Status Report (TWCC-73) signed by Dr. R indicating that he was taking the claimant off work on January 21 through June 21, 2004. There was also a copy of another TWCC-73, dated June 11, 2004, taking the claimant off work from June 21 through August 21, 2004. The Commission-appointed RME doctor, in a report dated April 12, 2004, states that the claimant has been off work since January 21, 2004. There is no evidence in the record that the claimant returned to work after January 21, 2004. We reverse the hearing officer's determination that the claimant's second period of disability began on June 21, 2004, as being against the great weight and preponderance of the evidence. Cain, supra. We render a new decision that the claimant had disability beginning on April 17 and continuing through August 11, 2003, and again beginning January 21, 2004, and continuing through the date of the hearing.

We affirm the hearing officer's decision on the extent-of-injury issue and reverse and render a new decision that the claimant's second period of disability began on January 21, 2004, and continued through the date of the hearing.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge